REMARKS

Claims 1-23 are pending in this application, purportedly are finally rejected, and are at issue herein. Reconsideration of the finality, clarity, and completeness of the above referenced Office Action and the substance of the grounds of rejection of the claims of the instant application in view of the following remarks are respectfully solicited.

The applicants would first like to address the proprietary of making this Office Action final. In accordance with MPEP §706.07(a) a second or subsequent action on the merits shall be final "except where the Examiner introduces a new ground of rejection that is neither necessitated by applicants' amendment of the claims nor based on information submitted in an Information Disclosure Statement ..." Despite this explicit prohibition against making an Office Action final when a new ground of rejection is set forth against an unamended claim where no new IDS has been filed, the Examiner has made the above-identified Office Action final and has issued a new ground of rejection of claim 17. As such, the applicants respectfully request that the Examiner withdraw the finality of this rejection as it is premature in view of the new ground of rejection of claim 17.

In the previous Office Action dated October 27, 2003, the only ground of rejection set forth with regard to claim 17 was under 35 U.S.C. §112, second paragraph. The applicants timely traversed this ground of rejection in the response filed January 21, 2004, without amending any of the claims of the application. Further, the applicants did not file an Information Disclosure Statement during the period set forth in 37 C.F.R. 1.97(c) with the fee set forth in 37 C.F.R. 1.17(p). In the Office Action mailed April 22, 2004, this §112, second paragraph rejection is not repeated, apparently having been overcome by the applicants' response thereto. However, the Examiner has apparently set forth a new ground of rejection of claim 17 in paragraph number 3 of the April 22 Office Action wherein the Examiner states: "Claim 17 does not teach or define any additional limitation over claims 1-16 and therefore is rejected for similar reasons." While the applicants are unclear as to what ground of rejection the Examiner is citing against claim 17 because the Examiner has not provided any statutory basis for this rejection and the applicants are unsure to what the phrase "similar reasons" refers, it is clear that this paragraph 3 of the Office Action is setting forth a new ground of rejection of unamended claim 17. As such, the applicants respectfully submit that the finality of this Office Action is premature in

accordance with MPEP §706.07(a), (c), and (d). The applicants therefore respectfully request withdrawal of this final rejection in accordance with MPEP §706.07(e).

As indicated above, the applicants are unclear as to the statutory basis of the rejection of claim 17 because paragraph 3 does not set forth the statutory basis nor the reasoning of this rejection as specifically required by MPEP §707.07(d). That is, while the "similar reasons" may refer to the rejection set forth in paragraph 2 under 35 U.S.C. §103(a), multiple reasons are cited for the various claims rejected by paragraph 2, and therefore the applicants are unclear to which reasons the phrase "similar reasons" refers. As stated in the MPEP §707.07(d) under the sub-heading "Improperly Expressed Rejections", stereotyped and non-informative language that should be avoided is discussed including the phrase "for the reasons of record". The applicants respectfully submit that the phrase "for similar reasons" is also stereotyped and non-informative language that does not allow the applicants to clearly determine why claim 17 is now being rejected. Further, paragraph 2 only rejects claims 1-16 and 18-23 under 35 U.S.C. §103(a), and explicitly excludes a rejection of claim 17. As such, it would not appear to be logical to assume that the paragraph 3 rejection of claim 17 would be under the same statutory basis since this claim was specifically excluded in paragraph 2.

In view of the requirements that the Office Action be complete and clearly set forth any basis and reasoning for rejecting the claims of the present application, *see* MPEP §707.07 et seq., the applicants respectfully request withdrawal of this Office Action and reissuance of a non-final Office Action which clearly sets forth any basis for rejecting the claims of this application, specifically claim 17. The applicants respectfully submit that such a new complete Office Action cannot be made final if claim 17 is rejected on any new ground because the applicants have not had any opportunity to fairly access the merits of any such rejection of this unamended claim 17. Indeed, since the applicants have successfully traversed the §112, second paragraph rejection of claim 17, the applicants respectfully submit that claim 17 should be indicated as being allowable over the prior art of record.

While the applicants respectfully submit that this Office Action is improper as not including a complete and clear Examiner's action, specifically regarding claim 17, the applicants set forth hereinbelow additional remarks traversing the rejection of claims 1-16 and 18-23 under 35 U.S.C. §103(a). Specifically, these remarks will be directed to the Examiner's remarks regarding the previous response traversing this ground of rejection, focusing primarily of the teachings of Coile et al. '380 as relied upon by the Examiner.

As recognized by the Examiner, the Recio et al. '418 system relates to the freeing of resources immediately upon the closing of a TCP connection. In the Recio et al. '418 system, "where no re-transmission is needed, i.e., no packet lost during the connection is active, all the resources associated with the connection will be returned immediately to the system when the connection is closed. In the case when the retransmission is required, the system will still keep the information about closed connections with re-transmissions for a predetermined time such as four minutes." Recio et al. '418, column 1, line 62 – column 2, line 3 (emphasis added). This determination of whether the entire TCB should be immediately released when the connection is closed or whether the entire TCB must be maintained in the TIME_WAIT queue when the connection is closed is based upon the checking of a STATUS flag. "The resources associated with the connection, such as TCBs, will be released immediately if the STATUS flag has not been changed to one. ... Alternatively, if the STATUS flag has been set to one, the TCB for the connection with packet retransmission is linked to the TIME_WAIT queue." Recio et al. '418, column 3, lines 17-25.

Recognizing that the system of Recio et al. '418 either releases all of the information in the TCB or maintains all of the information in the TCB upon the closing of a TCP connection, the Examiner cites to Coile et al. '380 to teach the maintenance of a connection object that does not require all of the resources of a TCB. However, contrary to the system of Recio et al. '418 that deals with the releasing or maintaining of the TCB after the TCP connection has closed, the connection object of Coile et al. '380 is only utilized when a connection between a client and a server is to be maintained through a cut through proxy. In other words, the connection object of Coile et al. '380 has no relation to what happens once the connection between the client and server has been closed. As described in Coile et al. '380, "the present invention creates a simplified connection object for the proxy which eliminates the overhead associated with keeping TCBs for two connections." Coile et al. '380, column 6, lines 17-24. That is, this connection object takes the place of two TCBs in the proxy during the existence of the TCP connection to allow data to be exchanged through a proxy between a client and a server. However, the connection object of Coile et al. '380 in no way affects the TCB that is required to be maintained during the existence of the connection at the client or at the server and of the communications path.

Further, Coile et al. '380 does not discuss what happens to this smaller connection object at the time the connection between the client and the server through the proxy is to be terminated. Instead of discussing the freeing of resources upon the termination or closure of a

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TCP connection, "The cut through proxy instead provides a way to join the connections while continuing stateful inspection of each packet that is sent and received so that security restrictions can still be enforced." Coile et al. '380, column 7, lines 19-22. By using the connection object in the cut through proxy, "some of the processing and memory overhead involved in maintaining two fully terminated connections" can be eliminated. Coile et al. '380, column 8, lines 38-42 (emphasis added). However, the creation of the connection object is only performed when "the participating application determines that authorization is sufficiently complete and that subsequent packets from the client to the server for the same connection may be handled by the non-participating application which performs only stateful inspection without fully terminating connections on the client and server side." *Id* at column 11, lines 2-7. That is, Coile et al. '380 teaches that connection objects are only appropriate and necessary when "subsequent packets from the client to the server for the same connection" will be sent. This is contrary to the requirements of Recio et al. '418 that deals specifically with either releasing resources upon the termination of a TCP connection or maintaining those same resources in a TIME_WAIT queue upon the closing of the TCP connection. As such, the applicants respectfully submit that one of ordinary skill in the art would not be motivated to make the proposed combination as set forth by the Examiner.

Additionally, the applicants respectfully submit that there is no reasonable expectation of success in the proposed combination. That is, Coile et al. '380 only utilizes the connection object when it is determined that a cut through proxy may be utilized for continued communication between a client and server. However, Coile et al. '380 does not indicate that such a connection object is appropriate at either the client or the server end to replace the TCB required by the TCP/IP protocol. In other words, both the client and the server are required by the TCP/IP protocol to maintain a TCB during the active connection therebetween. Since Coile et al. '380 teaches that the connection object is appropriate only for a pass through proxy during the maintenance of a connection between a client and server, the applicants respectfully submit that utilizing this connection object at the client or server in place of the TCB and without utilizing a non-participating application as a pass through proxy does not have a reasonable expectation of success.
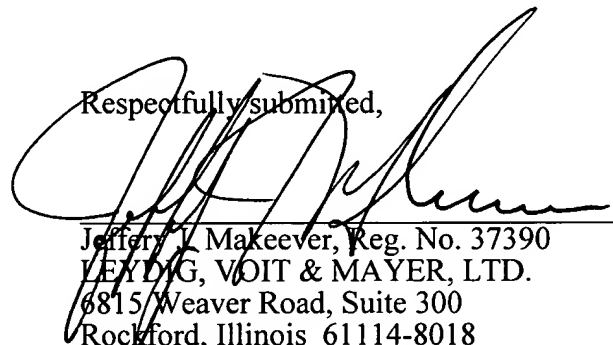
In view of the above, the applicants respectfully submit that the ground of rejection of claims 1-16 and 18-23 is improper and should be withdrawn. Reconsideration of this ground of rejection in view of the foregoing comments and indication of the allowability of claims 1-16 and 18-23 are therefore respectfully solicited.

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     In view of the above the applicants respectfully submit that claims 1-23 are in condition for allowance. Reconsideration of this application and indication of the allowability of claims 1-23 at an early date are respectfully solicited.

     If the Examiner believes that a telephonic conversation will aid in the resolution of any issues not resolved herein, the Examiner is invited to contact the applicant's attorney at the telephone number listed below.

Respectfully submitted,

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